

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARCO SANTIAGO,

Plaintiff,

v.

BARRY WILKINSON, et al. et al,

Defendants.

CASE NO. 3:20-CV-5538-RSL-DWC

ORDER

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. Before the Court is Plaintiff's Motion to Strike Affirmative Defenses Pursuant to Fed. R. Civ. P. 12(f) (the "Motion"). Dkt. 16.

Defendants filed their Original Answer to the Complaint on August 20, 2020, listing five affirmative defenses. Dkt. 14. On August 31, 2020, Plaintiff filed the Motion. Dkt. 16. On

September 9, 2020, Defendants filed an Amended Answer, listing three affirmative defenses.  
Dkt. 16. On September 11, 2020, Defendants filed a Response to the Motion.<sup>1</sup> Dkt. 18.

Rule 12(f) of the Federal Rules of Civil Procedure allows a district court to “strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010). Defendants are required to “affirmatively state any avoidance or affirmative defenses.” Fed. R. Civ. P. 8(c)(1).

Here, the Motion seeks to strike the affirmative defenses as alleged by Defendants in the Original Answer. Dkt. 14, 16. Defendants filed an Amended Answer on September 9, 2020. Dkt. 17. Defendants may amend once as a matter of course within 21 days of serving their Answer. *See* Fed. R. Civ. P. 15(a)(1)(A). In light of the filing of the Amended Answer, Plaintiff’s Motion (Dkt. 16) seeking to strike the affirmative defenses in the Original Answer is denied as moot. *See Russell Rd. Food & Beverage, LLC v. Galam*, 2013 WL 6684631, at \*1 (D. Nev. Dec. 17, 2013) (denying motion to strike affirmative defenses in the answer as moot once an amended answer was filed).

Dated this 23rd day of September, 2020.



David W. Christel  
United States Magistrate Judge

---

<sup>1</sup> Also pending is Plaintiff’s Motion for Summary Judgment which will be ready for the Court’s consideration on October 16, 2020 and which will be addressed in a separately filed report and recommendation. Dkt. 19, 20.